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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

DEBORAH BAROI,

Plaintiff and Appellant,

v.

ARCADIA UNIFIED SCHOOL DISTRICT
et al.,

Defendants and Respondents.

B202695

(Los Angeles County
Super. Ct. No. GC037310)

APPEAL from a judgment of the Superior Court of Los Angeles County. Jan
Pluim, Judge. Affirmed.

Law Office of Russell D. Kinnier and Russell D. Kinnier for Plaintiff and
Appellant.

McCune & Harber and Kristine J. Exton for Defendants and Respondents.

Deborah Baroi (appellant) appeals from a final judgment entered after the trial court sustained, without leave to amend, the demurrer of respondents Arcadia Unified School District (AUSD), David Vannasdall (Vannasdall), Mary Ann Sund (Sund), Diane Carlile (Carlile), Christina Aragon (Aragon), and Cynthia R. Laureano (Laureano) (collectively respondents), to appellant's third amended complaint.¹ Appellant, who was not a member of the Arcadia Teachers Association (teachers association), appeals on the sole ground that the trial court erred in determining that she was required to exhaust the administrative remedies afforded to members of the teachers association. We affirm.

FACTUAL BACKGROUND

In April 2005, AUSD posted an opening for the position of principal at Arcadia High School.² The posting described the selection process and stated that certain candidates would be interviewed by a panel comprised of a cross-section of administrators, employees, parents, and students. Final candidates were to be interviewed by the AUSD Superintendent. The selection process was governed by an agreement between the AUSD Board of Directors and the teachers association (the agreement). The agreement required that no less than two, nor more than four, candidates would be recommended to the Superintendent, who would make the final recommendation to the Board of Education.

¹ Appellant alleged that David Vannasdall is an individual who was appointed to the position of principal of Arcadia High School; Mary Ann Sund is an individual who was employed by AUSD as Deputy Superintendent; Diane Carlile is an individual who was employed by AUSD as Director of Personnel Services; Christina Aragon is an individual who was employed by AUSD as Assistant Superintendent Business Services; and Cynthia R. Laureano is an individual who was employed by AUSD as a High School District Curriculum Coordinator.

² All facts are taken from the allegations in appellant's third amended complaint and are accepted as true for the purposes of this appeal. (*Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 320.)

Both appellant and Vannasdall applied for the vacant principal position. Vannasdall had just resigned from his position as principal at Oaks High School in Cincinnati, Ohio and was preparing to relocate to California. Despite the fact that Vannasdall did not possess a valid California administrative credential, Sund, Carlile, Aragon, and Laureano exerted their influence over the screening and interview process to ensure that Vannasdall's application was considered by the selection panel.³

On or about May 25, 2005, Vannasdall informed a member of the local media in Cincinnati, Ohio, that he had accepted a teaching position at a public high school in California.⁴ Oral interviews of the candidates were conducted on or about May 26, 2005. Vannasdall failed to appear for the interview, but, over the objections of the selection panel members, and in violation of long-standing policy of AUSD, Sund, Carlile, Aragon, and Laureano arranged for and allowed Vannasdall to interview via telephone.

Following the initial tally of results from the oral interviews, appellant and Vannasdall were the two leading candidates, each receiving equal support from the panel. However, Sund, Carlile, Aragon, and Laureano coerced the panel members into forwarding only one candidate, Vannasdall, to the Superintendent. Vannasdall was the winning candidate for the principal position.

Following Vannasdall's selection, the teachers association filed a grievance against AUSD because the selection panel had forwarded only one candidate's name to the Superintendent for consideration, rather than the minimum of two names required by

³ The job posting specified certain minimum requirements for the position including, but not limited to, the possession of a California administrative services credential.

⁴ Appellant alleged that this job was, in fact, the principal position at Arcadia High School. Appellant also alleges, on information and belief, that Vannasdall had listed the AUSD as his employer on a mortgage loan application. These allegations suggested that AUSD had already selected Vannasdall for the job, in violation of the selection procedures in place.

the terms of the agreement. AUSD and the teachers association then entered into an informal grievance resolution which provided that the top three candidates would be interviewed again, this time by the AUSD Governing Board, which was itself going to make the final decision as to who would be selected as principal of Arcadia High School. Appellant alleges that the grievance resolution was actually a public relations ploy, made in an attempt to prevent any further negative media coverage of the hiring process.

Appellant, having been one of the top three candidates, was then interviewed by the AUSD Governing Board. Sund, Carlile, Aragon, and Laureano made improper contact with AUSD Governing Board members in an effort to ensure that appellant was not selected and made disparaging statements to AUSD Governing Board members concerning appellant's qualifications, work ethic, aptitude, and skills. Despite the grievance resolution's specific mandate that the three candidates be reinterviewed by AUSD Governing Board members, respondents set up a four-member panel consisting of non-AUSD Governing Board members and required appellant to submit to an interview by this alternate panel. This was an express violation of the terms of the grievance resolution.

Ultimately, AUSD announced that Vannasdall had been selected for the position of principal of Arcadia High School. Appellant alleged that Vannasdall was a preselected candidate and that the entire selection process was a fraudulent sham. Appellant further alleged that she submitted her claim to AUSD for consideration, but her claim was denied pursuant to a notice sent via certified mail on December 14, 2005. Appellant claimed that no other administrative remedies were available to her to resolve this matter.

PROCEDURAL HISTORY

1. The Complaints

Appellant filed her original complaint in this matter on June 13, 2006. She then filed a first amended complaint, alleging seven causes of action. Respondents demurred on the grounds that appellant had no statutory authority to file these claims against AUSD and that the claims failed to state causes of action. Although appellant's failure to pursue administrative remedies was not cited by respondents as a basis for this first demurrer,

the trial court raised the issue at the hearing, explaining that the court did not usually see cases of this nature because of the existence of administrative remedies. The court also pointed out that appellant had failed to present a statutory scheme that imposed liability, stating: “If you’re going to hang your hat on [Government Code section] 815.2, I’ll sustain the demurrer right now.” However, the court permitted the parties the opportunity to research the issue, directing that “If you’re going to sue a district entity or employees of an entity you have to have statutory authority to do that.” The trial court sustained respondents’ demurrer but granted appellant leave to amend.

Appellant filed her second amended complaint on January 5, 2007, alleging five causes of action against respondents. Respondents again demurred, arguing similar grounds as set forth in their demurrer to appellant’s first amended complaint. At the hearing, the court’s tentative ruling was to sustain respondents’ demurrer with leave to amend. The parties submitted on the tentative, and appellant filed her third amended complaint on May 9, 2007.

The third amended complaint set forth five causes of action: (1) negligence against AUSD, Sund, Carlile, Aragon, and Laureano; (2) negligent supervision against Sund, Carlile, Aragon, and Laureano; (3) breach of contract against AUSD; (4) civil conspiracy against all respondents; and (5) intentional interference with prospective economic advantage against Sund, Carlile, Aragon, and Laureano.

2. Respondents’ Demurrer to the Third Amended Complaint

Respondents’ demurrer to the third amended complaint, filed on May 25, 2007, asserted numerous grounds. First, all respondents demurred to all five causes of action on the grounds of res judicata, collateral estoppel, and failure to exhaust administrative remedies. Respondents argued that appellant inconsistently argued that she was a beneficiary of the teachers association agreement; that she benefited from a grievance brought under the agreement, which was determined in her favor; and that she was not bound by res judicata and collateral estoppel by the resolution provided in that agreement. Further, respondents argued that, had appellant been dissatisfied by the grievance resolution or any acts that followed, she was obligated to have continued the

grievance procedure to level II or commenced an entirely new grievance. Because appellant did not proceed further with the grievance process, respondents argued, her lawsuit was barred in its entirety.

In addition, respondent AUSD demurred on the ground that appellant had no statutory authority to file the first, second, fourth, and fifth causes of action against it. Respondent specifically argued that Government Code sections 815.2 and 820, subdivision (a) were insufficient authority. AUSD demurred to the first cause of action for negligence by incorporating its argument that appellant failed to allege enabling statutory authority for such a claim.

Respondents demurred to the second, third, fourth, and fifth causes of action on the grounds that appellant failed to state a claim under Code of Civil Procedure section 430.10, subdivision (e). As to the second cause of action for negligent supervision, respondents argued that the alleged error complained of was corrected, thus there was no resulting harm to appellant. As to the third cause of action for breach of contract, respondents argued that the breach of contract claim was already resolved through a grievance process; thus, appellant could not establish damages. As to the fourth cause of action for conspiracy, respondents argued that appellant presented no facts showing a common design or common purpose to defraud appellant. In addition, respondents argued that employees cannot conspire with their employer if they are acting in their official capacities on behalf of the employer. And as to the fifth cause of action for intentional interference with prospective economic advantage, respondents argued that appellant had failed to allege a probability of future economic benefit and had failed to claim that the alleged breach of contract disrupted a contractual relationship with AUSD.

3. The Hearing and the Trial Court's Ruling

The hearing on respondents' demurrer took place on June 28, 2007. The court issued a tentative decision, and began the hearing by stating its position that "once [appellant] undertook the administrative procedures, that was her remedy. She can't have her cake and eat it too." The court reiterated during the hearing its position that "she had an administrative remedy that she elected to initially pursue, and she should have gone

through the whole procedure or none at all.” However, the court made it clear that appellant’s failure to pursue her administrative remedies was “not the only reason” for the court’s decision to grant the demurrer, indicating that “there’s also a causation issue too.”

After hearing argument, the court took the matter under submission. In its written ruling dated July 2, 2007, the court stated that respondents’ demurrer was “sustained without leave to amend for the reasons set forth in the moving papers.” The court further noted that appellant, “having availed herself of the grievance procedures, must exhaust these administrative proceedings prior to proceeding in court.” The court asked respondents to prepare an order of dismissal. The order of dismissal, which the court signed on July 17, 2007, stated that “the [d]emurrer was sustained without leave to amend for the reasons set forth in the moving papers.”

Appellant’s notice of appeal was timely filed on September 25, 2007.

DISCUSSION

I. Standard of Review

“On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.] The judgment must be affirmed ‘if any one of the several grounds of demurrer is well taken. [Citations.]’ [Citation.] However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment. [Citation.]” (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.) The legal sufficiency of the complaint is reviewed de novo. (*Montclair Parkowners Ass’n v. City of Montclair* (1999) 76 Cal.App.4th 784, 790.)

II. Appellant Has Not Met Her Burden of Showing That the Court Erroneously Sustained the Demurrer

The trial court stated, both in its written ruling dated July 2, 2007, and its written order of dismissal dated July 17, 2007, that respondents' demurrer was sustained "for the reasons set forth in the moving papers." Those reasons included respondents' arguments that appellant's claims were barred by res judicata and collateral estoppel; that appellant failed to cite enabling authority for her claims against AUSD; and that appellant failed to state facts showing the elements of her claims against respondents.

While the trial court specifically noted that appellant was required to pursue her administrative remedies before proceeding in court, and the majority of the hearing was spent discussing the question of appellant's failure to pursue administrative remedies, the court made it clear that this was not the only ground for its decision to sustain respondents' demurrer. At the hearing on respondents' demurrer to appellant's third amended complaint, the court specified that the failure to pursue administrative remedies was "not the only reason" that the demurrer was sustained -- it was simply the one that "[stuck] out in [the court's] mind."

Appellant does not argue that these alternate grounds for the trial court's decision to sustain respondents' demurrer were erroneous. Instead, appellant has focused her opening brief on the sole issue of whether she was required to pursue administrative remedies.⁵

"On appeal, [appellant] bears the burden of demonstrating . . . that [the] demurrer was sustained erroneously." (*Terhell v. American Commonwealth Assocs.* (1985) 172 Cal.App.3d 434, 438.) Appellant has not met her burden of showing that any of the other reasons set forth in respondents' moving papers -- including collateral estoppel, res

⁵ Appellant did not file a reply brief in this matter, therefore she did not respond to respondents' recitation of all the alternative reasons supporting the trial court's decision to sustain their demurrer.

judicata, failure to state an enabling statute against AUSD, and failure to state a cause of action under the specific elements of the claims alleged -- were erroneous. Without an explanation of, or even a reference to, these alternative grounds for the trial court's decision to sustain the demurrer, appellant has not met her burden of showing that the trial court erred.

III. Failure to Exhaust Administrative Remedies

We have determined that appellant's challenge to the court's ruling on demurrer must fail because appellant has conceded all of the bases for the demurrer other than the failure to pursue administrative remedies. However, as set forth below, we find that even if appellant's failure to pursue administrative remedies were the sole basis for the trial court's ruling on demurrer, we would affirm.

Generally, where an internal administrative remedy exists and nonstatutory causes of action are asserted, the internal administrative remedy must be exhausted before filing a civil action.⁶ (*Williams v. Housing Authority of Los Angeles* (2004) 121 Cal.App.4th 708, 723-724.)

Appellant acknowledges that the teachers association members were provided "an extensive, multi-level grievance procedure" pursuant to the agreement between the teachers association and AUSD. However, appellant argues that because she was not a "classroom teacher, librarian or temporary teacher," she was "expressly excluded from membership by the terms of the [a]greement" setting forth these grievance procedures. Thus, appellant argues, the teachers association grievance procedures were unavailable to her.

⁶ The doctrine of exhaustion of administrative remedies applies "where an administrative remedy is provided by statute" (*Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 321) and where an entity, "be it hospital, voluntary private or professional association, or public entity -- has provided an internal remedy." (*Rojo v. Kliger* (1990) 52 Cal.3d 65, 86.)

In support of this argument, appellant cites *Westlake Community Hospital v. Superior Court of Los Angeles County* (1976) 17 Cal.3d 465, 477. In *Westlake*, a doctor was denied membership at two private hospitals. An affidavit submitted by one hospital in support of summary judgment quoted language from its bylaws, which provided: “‘A member failing of *appointment* shall have the right to appeal to the Medical Executive Committee.’ (Italics added.)” (*Id.* at p. 477.) While the court concluded that “the exhaustion of remedies doctrine fully applies to actions seeking damages for an allegedly wrongful termination or exclusion from membership” in a private association, it concluded that it could not, on the basis of the quoted language alone, conclude that the internal remedy provided by the hospital was available to the plaintiff. Accordingly, the court found that the hospital was not entitled to summary judgment on the basis of failure to exhaust internal remedies. (*Ibid.*)

The situation before us is factually distinguishable. The foundation for the trial court’s decision that appellant was required to exhaust administrative remedies was not based solely on a single sentence contained in an organization’s bylaws. Instead, it was based on the factual allegations in the complaint. Those allegations showed that the entire hiring process in which appellant participated was governed by the terms set forth in the agreement between the teachers association and AUSD. In fact, appellant’s causes of action are all based, at least in part, on respondents’ purported failure to comply with the provisions of that agreement. The negligence cause of action states that respondents engaged in negligence which resulted in “the violation of AUSD and related requirements in the conduct of the selection process.” The negligent supervision cause of action alleges that respondents “knew or should have known that the rules of the selection process had been violated when only Vannasdall’s name was forwarded to the Superintendent.” The breach of contract cause of action specifically alleges a breach of the agreement between the teachers association and AUSD. The civil conspiracy cause of action alleged that respondents furthered their “common scheme” by “working in concert to breach the terms of the agreement between the AUSD and the [teachers association] that required at least two candidates’ names be forwarded to the

Superintendent.” And finally, the cause of action for intentional interference with prospective economic advantage again cited the agreement’s requirement that “AUSD’s School Leadership Team was required to recommend no less than two candidates for the Arcadia High School Principal position to the Superintendent for final consideration.” Appellant may not complain that respondents failed to comply with the agreement and simultaneously claim that the grievance procedures set forth therein were not applicable to her.

In addition, the allegations show that appellant participated in the grievance procedures set forth in the agreement, which were utilized when the selection process was not carried out as the agreement required. Appellant concedes that, “because she wished to continue being considered for the Principal position,” she “submitted to the further process outlined in the Grievance Resolution.” In fact, appellant goes so far as to allege that respondents violated that grievance resolution by interviewing her with a panel consisting of non-AUSD Governing Board members.⁷ Thus, appellant’s allegations show that as a participant in the selection process, she was also a participant in the applicable grievance procedures. Again, these allegations are inconsistent with appellant’s position that those procedures were not available to her.

Further, a contractual relationship between the parties is not necessary before a plaintiff is required to exhaust internal grievance procedures. “Exhaustion of internal grievance procedures is required not because of contractual obligation but because of ‘compelling’ POLICY CONSIDERATIONS: ‘[A]n exhaustion of remedies requirement serves the salutary function of eliminating or mitigating damages. If an organization is given the opportunity quickly to determine through the operation of its internal

⁷ The grievance procedures set forth in the agreement specify that: “In the event the grievant is not satisfied with the decision at Level I, the grievant may appeal the decision, in writing, to the Superintendent or designee within ten (10) working days after termination of Level I.” Appellant does not allege that she took such action to express disagreement with the grievance resolution or the way that the terms of the resolution were implemented.

procedures that it has committed error, it may be able to minimize, and sometimes eliminate, any monetary injury to the plaintiff by immediately reversing its initial decision and affording the aggrieved party all . . . rights; an individual should not be permitted to increase damages by foregoing available internal remedies. [Citation.]” (*Palmer v. Regents of the University of California* (2003) 107 Cal.App.4th 899, 905.) Here, the rules which governed the hiring process provided AUSD an opportunity to quickly determine whether it had committed error in carrying out that process. Indeed, those procedures were utilized to point out to AUSD that at least two names were required to be submitted to the Superintendent. Appellant accepted the results of that grievance procedure, and participated in the resulting second round of interviews. Before bringing a complaint in court, appellant was required to utilize those internal procedures in order to permit AUSD to address her concerns quickly and minimize damages.

In sum, under the circumstances, appellant may not argue that the administrative procedures set forth in the agreement were not available to her. The facts alleged show that the provisions of the agreement were applicable to all aspects of the hiring process. Appellant was obliged to submit to those provisions as a participant in the hiring process. In addition, she took part in, and benefited from, the grievance procedure undertaken pursuant to the agreement, which was utilized to remedy the selection panel’s failure to submit two names to the Superintendent. Because appellant participated in this grievance procedure -- and was thus aware of it -- she can not now argue that she should be excused from exhausting internal remedies because she was not informed of the existence of such remedies.

Based on these facts, the trial court did not err in finding that appellant was required to at least attempt to resolve her dispute through the “extensive” administrative remedies set forth in the agreement. While these procedures may not have resolved appellant’s dispute, she was required to pursue them before turning to the courts.

DISPOSITION

Because appellant has failed to meet her burden of showing that the trial court's decision to sustain the demurrer was erroneous, the judgment is affirmed. Respondents are awarded their costs on appeal.

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_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
ASHMANN-GERST